

A
REPRESENTATION
OF THE
PREJUDICES

That may Arise in

T I M E

FROM AN

Intended Act,

CONCERNING

Marriages, &c.

L O N D O N,

Printed for *Robert Clavell*, at the *Peacock* at
the West-End of *St. Pauls*. 1692.

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REPRESENTATION

OF THE

PROSECUTIONS

THE ACTS OF

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IN

CONCERNING

CONCERNING

Matthias, &c.

LODGE

Printed for Robert Clough, at the Tavern, in the Strand, 1791.

T I S no Dishonour to the Greatest and Wisest of Assemblies, even a Parliament, to review and alter their own Acts and Constitutions, whenever it is found by Experience, that any Inconveniences or Mischiefs follow upon them : But when *Sins* are likely to follow, men are neither to venture nor stay for the Experiment.

Such, many such, both Sins and Inconveniences dangerous and greatly prejudicial seem but too apparent as the more than *accidental* Consequences of a *Bill* said to be now passing into a Law of the Land, entituled, 'An Act disabling *Minors* to marry without the Consent of their Father or Guardian, and against their untimely Marriage after the Death of their Father, and for preventing all Clandestine Marriages.

To shew how easily this Act may be eluded or abused, and represent withal the Sins and Mischiefs that are likely soon to follow it, I shall consider the Heads of it in an Abstract, that has come to hand, of it, (the Copy at large I have not seen, nor is it in my Power to procure, and do hope, not to see passed into a Law).

By the Draught I have seen, it is to be Enacted,
From the 30th. of *March* 1692. 'No Son under 18,
'nor Daughter under 16. shall Marry or Contract

‘ without their Father (if living) or Guardian be present and consenting to, or without Consent in Writing, signed in the presence of two Witnesses or more, ‘ otherwise the Marriage to be *ipso facto* void.

I will put the Case, That a Man of 17. years of Age contracts with a Woman of the same years; the Woman has Consent of her Parents, the Man has not his Fathers Consent, however these get married. Now is this Marriage by the Intended Act made *ipso facto* void, by Reason that the Man had not the Consent of his Father ?

The Question that will arise from such a Case as this, is, Whether such a Marriage can be made void, so as to secure the Consciences of such as shall be divorced in such a Case, that they may either Separate, or Marry others to the better liking of their Parents ?

Now 'tis not I conceive, a very easie matter to prove, That a Man of 17. years of Age, (who may well be supposed to have at that Age Discretion to know what he does, and what a Marriage Contract signifies) yet has *without the Consent* of his Father contracted himself to a Woman, and gone on deliberately in it, and actually married her, and known her as a Wife; may yet Lawfully and with a good Conscience yield to the breaking off this Marriage, be divorced, or take another Wife, because his Father gave not his Consent to the first Contract he engaged himself in. No doubt but it was his *Duty* to have sought and obtained the *Consent* of his Father, before he had contracted himself and married; But that his not having done his Duty in that case to his *Father*, will afterwards free him of his Contract and Marriage to his *Wife*, is a Conceit that few mens Consciences will admit.

The best Casuists have resolved the Marriage to be *Valid in foro Conscientiæ*, though made without the Consent of Parents and even against it; owning it the manifest Duty of Children to have the Parents Consent; but if they marry without, the want of it does by no means invalidate the *Contract*. When that is finished, the Man by Gods Law is to *forsake Father and Mother and cleave to his Wife*, goes out into another Family, and is not in such subjection as shall oblige him to break off against his own Inclination, or indeed as can justify him in Conscience in separating (should he have an Inclination to comply with his Fathers Will) from the Wife with whom he is become *one Flesh*.

*Vid. Gro-
tius de
Jure L. 2.
cap. 3.*

Some, that have pretended to argue the Invalidity of such Marriages, have never been able to prove any Thing like it from God's Law; the utmost they have proved, amounts to no more than this, *viz.* That it is deducible, and may be inferred from divers Passages in Scripture, that *Children ought to have their Parents Consent in Marrying*, which all the World owns. But this by no means proves, that what ought not to have been done may upon no account be *valid* when it is done. What is commonly brought as an Argument in the Case to prove the *Nullity* from Reason, *viz.* 'That a Son cannot alienate or give away his *Fathers Goods* without his Consent, much less himself, who is his *Fathers Child*, is very trifling. For though he cannot give his *Father's Goods*, nor alienate them, but the Law will restore them, and the Son perhaps may not be bound to give them away, though he had promised to do it, as not being obliged to fulfil an unlawful Promise; yet if he alienates them to another as his own, and has received from him, with whom he has contracted for them, an *equitable* Consideration; he is obliged in Conscience no doubt to an Equivalent Resti-

tution, if he does not make good his Promise in their delivery, or whenever a Law of the Land shall cause the Return of the Goods to the Father. Besides, the World never yet supposed, I presume, that the Property and Dominion a man hath in his *Goods*, and that which he hath in his *Child* are of the same nature or the like extent; or that a Child hath no more Power over his own *Body* to dispose of that to his own liking, than of his *Fathers Goods*, in which he hath no manner of Property. The Child no doubt is *interested* in his *own Marriage*, and therefore is not to be disposed of by the Father in Marriage against his own Inclinations. And therefore when he understandeth the *Interest* himself hath in contracting for the Marriage of himself, and contracteth upon that *Interest* of his own without his Father; he is to blame no doubt for passing by the *Interest* of his Father, but under no necessity when that is done, to disclaim what he has acted upon the account of his *own Interest* in the Marriage of himself; but under an obligation of Conscience not to rescind the Contract he has made with another upon it. They who would deny this, must affirm the Dominion of the *Father* to be *absolute*, and at all times the same; and also that the Child is under the same Restriction at 20, 30, years of Age, as at 17, whether out of the Father's Family or in it. (A thing 'tis which the generality of the World never dream't of.) The only thing that can be pretended, if they will not say this, is that the Child at more years may have more Discretion: But *one* may have Discretion at 17, which *another* has not at 20, 30, years of Age: and for that Reason a Time cannot be fixed for the Validity of a Contract, but the Validity of it *in Conscience* depends upon a Man's having the Use of Reason, when he made it; be it at any Age.

'Twill be said I know, The *Law of the Land* will secure the Conscience in this case; But it should be first proved, that God allows us to take *Man's Law* for our Direction in this matter; otherwise where there shall be found a Repugnancy between God's Law and any Law of men; They who think in Conscience that they are to *obey God, rather than Man*, cannot be perswaded that any Law of the Land will bear them out in acting against the Law of God. And here in this case there is so far a Repugnancy, that the Law of *Christ* says, if a man be *Divorced* for other Cause than that of *Fornication*, and marry another, he committeth *Adultery*, and causeth the Wife to commit *Adultery*; But the Intended Law of the Land makes *void* Marriage, for want of the *Consent of the Father* of the married Person; a Cause that we find no Instance of any Divorce for among the *Jews*, when their Practice was permitted.

Some may say, This making the Marriage void, is not a *Divorce*, but the Declaration of a *Nullity* in the Marriage; but this I fear is a *Subtile Distinction*, that can give little Security to the Conscience. For the thing will be still in dispute, What makes a Marriage in the sight of God, whether the Voluntary Action of a Person having the use of Reason, that contracts himself to a Woman in face of God's Church, and cohabits with her upon it, or the Consent which his Father shall give to what he does? This the Conscience of a Voluntary Agent will resolve him in more plainly, than all the Arguings of subtle Wits in the case.

(2.) But now besides the *Snare* which the *Dissolution* of Marriages according to this Act may prove to *Mens Consciences*; there may be an Injustice in it in many Cases to an Innocent Party. As in the Instance

proposed before (for Example) of a Man at 17. marrying a Woman of the same Age.

The Woman may have the Consent of her Parents, or is of Age sufficient, according to this Law, to marry without them, and may be deceived by the Man, and told that he has no Father living, or that his Father is consenting, and made to believe as much; or may not mind to look after it, being of less discretion than a Man of the same Age with her: In such a Case a Marriage may succeed, and a *Cohabitation*. Now should a *Separation* be made after this as by the Intended Law it may, (no Provision being made to help the *Woman* in case of such a Fraud) it would be very hard in many Respects, as She cannot be secured in Conscience in marrying again, as She has been robbed of her Virginity, as She may be left with Child, &c. The Innocent Party in such a case would be manifestly punished for the fault of the other.

3. Again 'tis by this evident, what advantage likewise a *fraudulent* Person might make of this Law, to serve his Ends upon a Woman, and then get a Separation from her, or throw her off upon any Dislike.

4. In a word, Suits about the Validity of Marriages will very probably be found endless, considering the many Opportunities ill Men may have by this Act, to call a Marriage into question, whenever they shall dislike, or be willing to get rid of their Wives. Which may prove a much greater Evil to Parents, as to worldly Respects, in the Marriage of their Children, than the Mischiefs which some may imagine this new Law will prevent.

5. The Children likewise born of such Marriages are left without Provision, unless it be that which the Law of the Land hath already made for *Bastards*, which
these

these I suppose are intended to be reputed. And when the Women that are divorced in such Marriages shall come to be reputed *Harlots*, as they must in consequence. That Stain may be more a Prejudice to Families than can at a distance be apprehended.

By these Instances, any Man that would set himself to consider, may guess at a multitude of other very dangerous Consequences, prejudicial to Christianity, and more prejudicial to Families, than the Mischief intended to be quenched, which may follow upon this *Act*, through the Inadvertency of many well meaning Persons, the Endeavours of others to elude, and others to abuse the same.

Son under sixteen, or Daughter under fourteen (their Father being dead) tho they marry or contract with Guardians Consent, yet such Marriage shall be ipso facto void.

The Intention of this, I suppose, is to prevent the Fraud and Dishonesty and Betraying of Trust in *Guardians*, that they may not, as some perhaps have done, marry a *Minor* for Gain, or to their own Relations as others, to the Child's great Disadvantage, while it is so young as to be supposed not to have the Use of Reason, to know what the Contract of Marriage signifieth, or to assent to such a Contract. A Crime this, that deserves Punishment by such Forfeitures as the Guardian is subjected to by this *Act* in case of betraying his Trust, *viz. Value of a Third Part of the Minors Estate*, and perhaps a greater Penalty than so. But in the making void such Marriages many Consciences may be intangled as before, and greater Inconveniences happen to the Minor in respect of Reputation, &c. than the Provision which is made hereby for the Security of the *Estate* can recompense.

Minor marrying contrary to the Act, not to have the Benefit of any Law by reason of such pretended Marriage,

riage, but shall lose Right and Title to Goods, Chattels, Dower, Letters of Administration, &c.

A Punishment somewhat too severe upon Minors, whom this Act supposes not to have *Understanding* to Contract for their own Marriage; who cannot therefore well be supposed to have *Forefight* enough to prevent the Danger which after this Law they will incur.

The Father, Guardian or Friend of such Minor may prosecute in the Minors or their own Name, in Ecclesiastical Courts, and have the Marriage nulled.

A most strange Imposition this is certainly like to be upon the Church, that the *Church* shall be enforced to void Marriages according to the Laws of the *Secular Power*, when the Trust it hath in the matter of Marriages committed to it, is from the *Law of Christ*, which hath confined all Christians to marry *One to One* and the Marriage to be *Indissoluble* but in *Fornication*. The Civil Power may as well be an Enemy to Christianity as not (and that as well professing to maintain it as professing to persecute it) and to say therefore that God hath left the Consciences of Christians to be secured by the Civil Power; submitting to what it determines in this case, is to say, that the Consciences of Christians can be secured in the *Dissolving* of *Marriages*, otherwise than according to the Law of our Lord. Whenever therefore the Law of a *Kingdom* shall inforce the *Ministers* of the *Church* either to void those Marriages which that hath disannulled, but which are good in the *sight of God*; or to bless those second Marriages which *this* alloweth, but *God's Law* makes *Adulteries* (the Party that is put away, and not for Adultery remaining alive) it will be a horrible Breach upon Christianity. When the *Church* shall be compelled to judge and disannul *Marriages* by *another Law* than that of *Christ*, and allow of, and bless others which that forbids. The Act of the
Church

Church in the Case will seem to concur for the securing the Consciences of Christians ; wherein when it is constrained to concur in an unlawful Case, upon whom shall those Souls that are in danger by that means to perish be chargeable ? They who will say upon the Clergy that shall concur in it (as I doubt not but many of this Age will be ready enough to say) will 'tis to be hoped excuse the Clergy, who shall be afraid to concur in it, for fear of a *greater* Punishment from God (in being *Partakers* with what will open a Door for *Adulteries*) than that which severe Governors may inflict to enforce Laws with which in Conscience they cannot comply.

But besides upon a *Divorce* in which the Church is Judge, Bond is at present required by the *Canon* to be taken, that neither of the *separated* Parties marry again, but *live single*. (a Law made for Prevention of *designed Adulteries*, which were found to be made use of to void Marriages of set purpose.) And if this Canon be observed, the Parties separated after such Marriages and Cohibitation in their Minority, are to be obliged to *live single*. To which I doubt the Parents of such Minors will not be over-willing ; neither is it, I suppose, designed ; but the Church must have a Constraint laid upon her, and her Canons must be laid aside at the pleasure of the Secular Power ; how well or ill soever the Concerns of Christianity go in the mean time.

'Tis too long to mention the Advantage which the Papists will have against the Reformation, when *Divorces* shall become practicable after this manner, who may have colour enough to charge it on us, as the Effect of our denying *Marriage* to be a *Sacrament* :

None to grant Licenses but Vicars-General of the two Archbishopricks. Master of Faculties, Chancellors of each Diocese, and one Deputy of theirs in each Diocese, with Approbation of the Bishop.

If any grant License to any not being (*viz.*) above eighteen, if Males, and sixteen, if Females, without Father or Guardians Consent, personally present, or his Certificate signed and sealed before a Justice of Peace, and attested under his Hand and Seal, and by the Oaths of two Witnesses; or to Minor (the Father being dead) without the Oath of two Witnesses that the said Minor is at least sixteen, if Male; and fourteen, if Female.

To forfeit five hundred pounds, and to be disabled to hold any Employ. And if the Deputy does contrary to the Act, he that Deputed him shall be liable to the Penalty, provided the Bishops be not liable for approving such Deputy.

A Forfeiture this, that a Man would not chuse to run the Hazard of, for all the supposed Advantages or Profits of Fees for granting Licences. It had been much more beneficial for Chancellors and their Deputies to have had their Faculties wholly taken away; and a Law made for Publishing the Banns in all Marriages, which would more effectually prevent the Mischiefs this Act is designed for. But this, I suppose, could not be, by reason that Great Men will not be upon the same Level with the vulgar, but Respect must be had to them even in Religious Matters, and Ecclesiasticks for a poor Reward must serve them in it, and be answerable for the Inconveniences which follow thereby. From which it is something that the Bishops are exempt, and that the Burthen and Danger lies upon their Offices and the Inferior Clergy.

Whoever marries such Minor, contrary to the Act, to suffer Death as a Felon without the Benefit of Clergy. Father, Mother, Guardian of Minors may prosecute, and if none of them do within twelve months, the next of kin shall sue to have the Party convicted of Life. No pardon to be pleaded in Bar of such Suit.

It is not intelligible by the Abstract I have seen, whether

ther the person so to suffer Death, be an *adult person* that have married such Minor, or the *Minister* that joins them in Marriage.

If it be the former, and there be no difference whether it be *Man* adult, or *Woman* that gets married to such Minor. A Woman which by this Law is no Minor after sixteen years of age, should she be prevailed with by a Youth of seventeen, (who by this Law is reputed a Minor) to marry him without his Fathers Consent, may come to suffer upon that account.

Yea be it Man or Woman, and be there some kind of Artifice in gaining the Affection of the Minor, yet when the Contract is voluntary, it seems somewhat hard, that the Crime shall be punished with death, especially when the Marriage is made void too, and when *Adultery* fraudulently committed with a Neighbour's Wife is not punished with any such severity, tho doubtless a much greater Crime. If the Party be to be punished with Death, the Marriage need not be made void; and if the Marriage be it self null, or by the Law may be disannulled, it merits not a Capital Punishment, while that of *Adultery* is not punished with it.

The Allowance of the *next of Kin* to prosecute after twelve Months, if the Father does not, is much more hard; when the Father shall not have the Power or Liberty to give an *After-Consent*, if he finds occasion for it: but a Kinsman (that thirsts after the Inheritance of his Estate perhaps) shall have it in his Power to convict the Offenders, when the Father who is the injured Person may be willing to remit the Offence.

But probably this Arguing is upon a Mistake, and it is intended that, *Whoever Minister or Parson shall join such Minor in Marriage he shall suffer Death.*

If it be so, methinks any Man of common Humanity should think it very severe, That when the *Guardian* aiding in the Marriage of a Minor against his Trust, or

Servant Domestick, or other Parson, who has by Fraud drawn in a Minor to such Marriage, shall be only punished, *some* by Forfeitures, *others* by Imprisonment: the Minister before whom such Contract is ratified (because in an undue manner) shall be punished with *Death*: and this too when the Marriage is by Law made *soluble*: 'Tis a very *great Crime* indeed, a most wicked Action for a Clergy-Man to be instrumental in marrying a Minor, that he has reason to think may not understand what he is going about; or if he does, whom yet he knows to take no notice of his Duty to his Parents, with whom he should advise, and by whom he should be directed in so weighty an Affair. But why is it so *great*? But because he betrays the Trust the Church hath put in him, and this in a Case that cannot be remedied afterwards (the *Marriage* when once consummate not being *soluble*.) But suppose the Marriage may be dissolved again according to this Law, the Crime is much less than before:

To prevent all Clandestine Marriages.

Minister Marrying without Banns or Licence, or at any other time than appointed by Law, and the in Priviledged Churches, is to be suspended ab Officio & Beneficio for the first Offence, and suffer Imprisonment for three years. The second time to be deprived and incapable of any Preferment for ever. If not Beneficed he shall be Degraded and Imprisoned.

This seems to comprehend all Clandestine Marriages and makes the Case equal, whether the Minister has done an Act of *Injustice* to any Person in Transgressing the Law or not. 'Tis severe that when an offence is not against the *End* of a Law, that an Infirmary in a Minister in yielding to the importunity perhaps of a mighty Man in his Parish that over-awes him too, so far as to ware the *Formalities* of the Law, shall be punished, as if he had done the Injustice the Law intends

tends to prevent. The Minister should not yield you'll say; True, yet there's never a Peasant or Mechanick in his Parish, but will take upon him to declare himself offended, when the stubborn Priest will not wave the Rules he is to go by, to oblige him; and what Difficulties may a Clergyman (whose maintenance is strait, and what he has Precarious too) be brought into by the strictness of this Act?

Minister shall not suffer if Licence be forged, &c.

'Tis a kindness at last that the Minister shall not suffer if Licence be forged. But he is still exposed to vexatious suits and molestations and must be at infinite Trouble to take and keep by him Memorials of the Circumstances of every Marriage, that he may be able to quit and clear himself, should he be called to account, as he may be at any time hereafter.

There is no man, if the case were his own, but would desire to be freed from so hazardous an Office, which though he endeavours to discharge with the utmost fidelity, shall expose him nevertheless continually to be harassed with suits, and brought in danger of losing all his Livelihood. Out of common Compassion therefore one would think such a Burthen and such Difficulties should not be imposed on the Clergy, which they might be eased of too by a Law, that no Marriage whatsoever be, before the Banns be published three several Sundays in a full Congregation in the Parishes where the Parties concerned live, and *This* to be the Ministers security; that if any Minister married any Persons without Banns published or notwithstanding *Impediment* alledged, then the Punishment be such as is here assigned, which one Provisee in all probability would prevent the mischiefs (designed by this Act to be prevented) more effectually than all the studied Cautions thereof.

And in that Case there would be no snare to mens

Consciences as here, where the Secular Authority takes upon it to void Marriages otherwise than by the Law of Christ; and to compel the Church to do the same.

Methinks there should be some Compassion for the *Clergy* as well as for the People called *Quakers*, who have not only a favour but an advantage in the close of this *Act*: from which, a Man that does not envy them in it may yet take occasion to Request, that the Consciences of the *Clergy* be not imposed on, any more than those of other men; As Experience may ere long evidence that they will be, where they shall be compelled to concur in the Execution of several *Particulars* of this *Act*.

To make them concur in which is hard at present, it is Provided that this *Act* be read in all Churches; a thing that that Man cannot in Conscience comply with, who does not believe that such Marriages are void by the *Law of Christ*, which by *this Law of the Land* are intended to be Dissolved, or made Null.

A Man that would set about it might write a Volume upon the Sins and Inconveniencies and Mischiefs that may follow this *Act*; should it pass into a Law of the Land; which 'tis to be hoped it never will in a Nation professing Christianity; should it ever, the Fault will lie heavy somewhere; chiefly upon those, who by their Place and Station should endeavour for the Interest of the Church and of Christianity, and yet in this Case are silent and content to let a Law pass, which hath a specious Pretext, but which in time shall make way for that to become Practicable (which suits the new modelled Opinions of some Modern Divines, but is widely different from the Law of Christ, and the Sense of the whole Church interpreting it) viz. That Divorces be for other Causes than that of Fornication.

